

PROCONTROLS CORPORATION**CONTRACT NO. V584C-664****VABCA-5477****VA MEDICAL CENTER
IOWA CITY, IOWA**

Corbin McMillion, President, ProControls Corporation, for the Appellant.

Janet R. Lemons, Esq., Government Trial Attorney, Roanoke, VA; Charlma O. Jones, Esq., Deputy Assistant General Counsel; and Phillipa L. Anderson, Esq., Assistant General Counsel, Washington, D.C., for the Department of Veterans Affairs.

OPINION BY ADMINISTRATIVE JUDGE THOMAS

The Government has filed a Motion to Dismiss this Appeal for lack of jurisdiction asserting that ProControls has failed to cite a "sum certain" which would allow the contracting officer to make a reasoned judgment. It further argues that the contracting officer has not issued a final decision nor has the Government filed a claim against ProControls.

BACKGROUND

Contract No. V584C-664 was awarded to ProControls on June 25, 1997, for the replacement of a 700 ton chiller. Appellant apparently submitted, and the VA approved, a submittal for a horizontally mounted split case pump. By letter dated December 15, 1997, Contracting Officer Risa Winters advised ProControls that a vertical pump was required. ProControls responded the next day with its argument as to why a horizontal pump was acceptable under the contract. Contracting Officer Winters responded by letter dated January 5, 1998, that a vertically mounted pump was required and instructed ProControls to submit new shop drawings as the previous one was now rejected. ProControls allegedly installed the horizontal pump on January 6, 1998.

By letter dated January 8, 1998, ProControls stated that it would not supply a different pump without an approved change order and asked that if it was the VA's intention to have the pump replaced "please issue the directive with a final determination indicating your findings. ProControls will begin the appeals process and make every effort not to prolong the outcome of this process." On February 5, 1998, the VA responded with a letter detailing why ProControls' interpretation was incorrect but proposed "a different option than requiring you to install a vertically mounted HSC compliant with contract requirements." The letter enclosed a proposed supplemental agreement that would allow the horizontal pump to remain, with the VA receiving a \$1000 credit. ProControls did not sign the proposed supplemental agreement.

Neither party has made a written demand for money upon the other. The February 5, 1998 letter did not contain any language that could be construed as making it a final decision. ProControls appealed the February 5, 1998, letter to the Board and the Government has challenged this Board's jurisdiction.

DISCUSSION

The VA states that a dispute arose between the parties as to whether the specifications

permitted installation of a horizontal pump but argues that ProControls has not asserted its right to a sum certain with sufficient specificity for the Contracting Officer to make a reasoned judgment. Thus, the VA avers that there can be no failure to issue a final decision, citing *Penn Environmental Control, Inc.*, VABCA Nos. 3599, 3600, 93-3 BCA ¶ 26,021. There is no Government claim here, the VA says, because the proposed Supplemental Agreement and letter of February 5, 1998 was simply a proposed solution to the problem. *Cox & Palmer Construction Corp.*, VABCA No. 3352, 91-3 BCA ¶ 24,055.

A claim is defined by Federal Acquisition Regulation, 48 C.F.R. § 52.233-1(c), as a written demand by one of the contracting parties seeking the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. Any of the three types of claims may be a contractor claim or a government claim. It is clear that neither party has made a written demand in a sum certain and it is also clear that a final decision has not been issued. However, Appellant's January 8, 1998 letter has putatively made a claim demanding a final decision on a question of contract interpretation, a claim commonly known as a "non-monetary claim." This Board has jurisdiction over non-monetary claims. *Smith's, Inc. of Dothan*, VABCA No. 2198, 85-2 BCA ¶ 18.

The request for final decision in this appeal was made on January 8, 1998. ProControls mailed its appeal to this Board on February 11, 1998 and it was received and docketed on February 17, 1998. In order for jurisdiction over a dispute to vest in this Board, the Contract Disputes Act, 41 U.S.C. § 601 et seq., requires that there be either a Contracting Officer's final decision or a failure to issue a decision on a properly submitted claim within the required time. *Paragon Energy Corporation v. United States*, 227 Ct.Cl. 176, 645 F.2d 966 (1981). When ProControls filed its appeal there had been neither a final decision nor the passage of the minimum of 60 days allowed by the CDA for the contracting officer to issue one. We hold that this appeal is premature. *Suburban Middlesex Insulation, Inc.*, VABCA No. 4896, 96-2 BCA 28,481; *Bolanos Construction, Inc.*, VABCA No. 2685, 88-1 BCA 20,371.

DECISION

For the foregoing reasons the appeal of ProControls Corporation, VABCA-5477 under Contract No. V101C-1574 is **Dismissed** for lack of jurisdiction. Should a dispute later arise regarding corrective work or the value of a credit, this Board will, with an appeal filed from a contracting officer's final decision, take jurisdiction to consider the particular relief requested.

Date: **March 10, 1998**

William E. Thomas, Jr.
Administrative Judge
Panel Chairman

We Concur:

Richard W. Krempasky
Administrative Judge

James K Robinson
Administrative Judge